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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,412

04/10/2007

Riccardo Palumbo

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12/23/2008

CRYOVAC, INC.
SEALED AIR CORP
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EXAMINER

KRUER, STEFAN

ART UNIT

PAPER NUMBER

3654

MAIL DATE

DELIVERY MODE

12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/588,412	PALUMBO, RICCARDO	
	Examiner	Art Unit	
	Stefan Krueer	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24 - 45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 24 - 45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>16 October 2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 40 – 45 are rejected under 35 U.S.C. 101 as claiming the same invention as that of **Claims 11 – 12, 14 - 17** of allowed Application No. 10529379 (US Patent Number not yet issued). This is a double patenting rejection.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, such as:

- An apparatus for taking up a succession of imbricated packaging bags carried by a pair of carrier tapes, said apparatus comprising:
- two carrier tape winding spools positioned coaxially with one another;
- a differential gear unit positioned between said spools, said differential gear unit removably connectable to a shaft of a bag loader whereby two carrier tapes can be wound up on said spools with equal tension;
- wherein said spools each have a recess in a surface which faces the other spool and wherein said differential gear unit is positioned in said recesses.
- wherein said spools and differential gear unit are positioned in a cassette housing.
- wherein each of said spools is integrally formed with a bevel gear coaxial with said spool.
- wherein said differential gear unit comprises a core and at least one pinion

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- gear attached to said core and positioned to mesh with each bevel gear.
- wherein said core comprises a mating hole for mating with the shaft of a bag loader.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 33 – 39 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **Claims 11 – 12, 14 - 17** of allowed Application No. 10529379 (US Patent Number not issued) in view of O'Neill (4,796,412) and in further view of Soubeyrand et al (FR 2581633).

Re: **Claims 33 – 39**, allowed application recites:

- An apparatus comprising:
- two carrier tape winding spools positioned coaxially with one another;
- a differential gear unit positioned between said spools, said differential gear unit removably connectable to a shaft of a bag loader whereby two carrier tapes can be wound up on said spools with equal tension;
- wherein said spools each have a recess in a surface which faces the other

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- spool and wherein said differential gear unit is positioned in said recesses;
- wherein said spools and differential gear unit are positioned in a cassette housing;
- wherein each of said spools is integrally formed with a bevel gear coaxial with said spool;
- wherein said differential gear unit comprises a core and at least one pinion gear attached to said core and positioned to mesh with each bevel gear; and
- wherein said core comprises a mating hole for mating with the shaft of a bag loader; however,

The allowed application is silent with respect to wherein each spool comprises a core with a core surface and walls forming a race where turns of tape are wound-up, wherein the core surface comprises resilient means for releasing a radial pressure acting on the turns of tape that have been wound up first.

Attention is directed to O'Neill who teaches his spool assembly (5) for winding-up at least two adhesive carrier tapes (3, 4) of a packaging taped bag chain in an apparatus (1) for taking up a succession of packaging bags (2a, 2b, 2c), wherein said at least two carrier tapes are wound about a respective spool (8, 9) and wherein each spool comprises a core with a core surface (understood), for feature of affording a "drive dog" (11, 12) respective of each spool for common drive by a "differential drive".

It would have been obvious to one of ordinary skill in the art to modify the reference of the allowed application with the teaching of O'Neill for utility.

With respect to said core of each spool comprising walls forming a race where turns of tape are wound up, though O'Neill is silent with respect to said wall, said walls are well known in the art.

However, O'Neill is silent with respect to resilient means for releasing a radial pressure acting on the turns of tape that have been wound up first.

Attention is directed to Soubeyrand et al who teach their resilient means (7, Fig. 5) for releasing a radial pressure on turn of tape (4) for features of promoting

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releasability of said tape during unwinding as well as minimizing a telescoping of said tape during winding or upon the conclusion of winding (Page 3, L. 13 - 21).

It would have been obvious to one of ordinary skill in the art to modify the invention comprising the claims of the allowed application and the reference of O'Neill with the teaching of Soubeyrand et al for utility.

Claim Objections

Claims 30 and 32 are objected to because:

- **Re: Claim 30**, Line 2, "the" of "the base" should be written as "a".
- **Re: Claim 32**, Line 2, the" of "the group" should be written as "a".
- Appropriate corrections are required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 – 26, 28 - 29 and 31 - 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soubeyrand et al in view of Grace (GB 2064477A).

Re: **Claims 24 – 26, 28 - 29 and 31 – 32**, Soubeyrand et al disclose a spool (2, comprising respectively:

- a core (6) with a core surface characterized in that the core surface comprises resilient means (Page 3, L. 3, "... compressible an for example, by a core ... of polyethylene...") for releasing a radial pressure acting on the turns of tape that have been wound-up first (Page 3, L. 13 – 15).
- wherein said resilient means comprise at least one resilient projecting tongue (7);

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- wherein a plurality of equally-spaced resilient projecting tongues are provided on the core surface.
- wherein said at least one tongue is inclined at an acute angle with respect to a tangent to the spool surface. 29
- wherein said at least one tongue is moulded with the core surface or a part thereof (Page 3, L. 13 – 15).
- wherein said resilient means comprise a continuous liner of a resilient material (Page 4, L. 22 – 27).

With respect to said resilient material comprises a material selected from **a** group consisting of rubber and foamed plastic material, though Soubeyrand et al disclose their resilient material comprises a synthetic material, such as polyethylene, the selection of a resilient material from a group consisting of rubber and foamed plastic material would have been obvious to one having ordinary skill in the art, since it has been held to be within the general skill to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

However, Soubeyrand et al are silent with respect to their core having walls forming a race where turns of tape are wound up.

Attention is directed to Grace who teaches his spools (11, 13) having walls where turns of tape are wound up as known in the art.

It would have been obvious to one of ordinary skill in the art to modify the reference of Soubeyrand et al with the teaching of Grace for containing wound tape for utility.

Claims 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soubeyrand et al Grace, as applied to Claim 24, and in further view of Gecic et al (US 20040206838).

Re: **Claim 27**, Soubeyrand et al disclose their tongue an acute angle to their core surface.

Grace is silent with respect to a tongue.

Attention is directed to Gecic et al who teach their spool (18, Fig. 9) having tongues (22) that are substantially tangent to a surface of their spool to, in part, mitigate the adhesion of their tape to the surface of their spool for releasability.

It would have been obvious to one of ordinary skill in the art to modify the invention of Soubeyrand et al and Grace with the teaching of Gecic et al for utility.

Re: **Claim 30**, Soubeyrand et al are silent with respect to cavities at a base of their tongue.

Grace is silent with respect to a tongue.

Attention is directed to Gecic et al who teach their spool (18, Fig. 9) having tongues (22) that are substantially tangent to a surface of their spool to, in part, mitigate the adhesion of their tape to the surface of their spool for releasability as well as having cavities (Fig. 9a) whereby their tongues can be retracted within the core of their spool to promote removal of their wound tape and mitigate a telescoping of said wound tape during removal.

It would have been obvious to one of ordinary skill in the art to modify the invention of Soubeyrand et al and Grace with the teaching of Gecic et al to promote productivity and quality.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carson et al (US 20020130058 A1), Fiorentino et al (3,295,778), Rengo (2,494,106), Ripplin (4,421,283), Yokoe (4,739,945), Vincent (5,354,012) and Carlson (3,737,028) are cited for references of apparatuses and elements of relevance to features of the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Kruer whose telephone number is 571.272.5913. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571.272.6856. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

/Stefan Kruer/

Examiner, Art Unit 3654

16 December 2008

/Peter M. Cuomo/

Supervisory Patent Examiner, Art Unit 3654